



Michael R. Burchstead | D: 803.255.0445 | E: mburchstead@collinsandlacy.com

June 6, 2018

NOTICE TO CEASE AND DESIST
FROM DISSEMINATION OF ADVERTISEMENT
INVOLVING JOHN WARREN

To Whom It May Concern:

As legal counsel to the John Warren for Governor Campaign (“Campaign”), this letter is regarding the American Future Fund’s purchase from your station of broadcast time to air a demonstratively false and misleading advertisement (“Advertisement”) targeting the gubernatorial candidate John Warren. The Campaign respectfully demands that your station refuse to continue to air the Advertisement or any substantially similar advertisement containing the false and misleading material.

Your station has no obligation to air this Advertisement from a private entity. Unlike advertisements directly from a candidate which a broadcaster generally must accept, both courts and the Federal Communications Commission have made it clear that “no private individual or group has a right to command the use of broadcast facilities.” Columbia Broad. Sys., Inc. v. Democratic Nat. Comm., 412 U.S. 94, 113, 93 S. Ct. 2080 (1973). In addition to your station’s right to refuse air time to this false and misleading Advertisement, the Campaign submits that keeping such deceptive materials off the air comports with your duty to the community you serve.

Moving to the substance of the Advertisement, while the statements questioning John Warren’s conservatism and the statement that “we just can’t trust him” are unfair and inaccurate, the Campaign accepts that they may be considered protected “political speech” under the First Amendment. However, the following claims made in the Advertisement are objectively false and misleading, and should not be allowed on the air:

Claim # 1. Warren flip-flopped on supporting open carry.

It is absolutely false that Warren has ever wavered on his support for open carry. The American Future Fund cites “WYFF, 4/4/18” in support of this notion. On June 5, 2018, WYFF News 4 (Greenville) conducted a “Truth Check”¹ on a substantially similar gun

¹ <http://www.wyff4.com/article/new-attack-ad-goes-after-republican-governor-candidate-john-warren/21088790>

control claim run by the Catherine Templeton campaign,² and found the claim to be false. As the “Truth Check” notes, the gun control claim appears to reference statements by Warren that “I think I’ll have to take [open carry] into consideration” and “I’ll have to give [open carry] some thought.” The “Truth Check” goes on to accurately state that Warren subsequently stated that he supports open carry and that he has been given the highest rating by the National Rifle Association. Once again, the contention made in the Advertisement on gun control is false, which is supported by the impartial assessment of WYFF itself.

Claim # 2. Warren took money from a liberal PAC boss.

Initially, the John Warren campaign was unsure as to which of Warren’s many donors this claim references. Among other things, the donor is not identified in the Advertisement and it cites only the Federal Election Commission (“FEC”), which has no jurisdiction over a campaign for statewide office. Standing alone, this failure to identify the donor in question renders the Advertisement misleading. Since the Advertisement went on the air, the campaign is on information and belief that the donor in question is Frank Shuler, who is affiliated with the Partnership for Conservation PAC. The FEC records for the PAC actually reveals that it donated more money to Republicans (75%) than Democrats (25%) nationwide.³ Unless the American Future Fund has additional information on Partnership for Conservation PAC of which the Campaign is unaware, the characterization of Mr. Shuler as a “liberal PAC boss” is inaccurate, deceptive, and misleading on its face.

Claim # 3. Warren says he’s 100 percent pro-life, but he supports exceptions.

It is absolutely accurate that John Warren is 100 percent pro-life, and Warren is proud to have received a 100 percent rating from South Carolina Citizens for Life. Warren has only spoken out in favor of *one* exception, to save the life of the mother, which is accurately reflected in the *Post & Courier* article cited in the Advertisement. This is the exactly the same position as the one adopted by the National Right to Life organization. Therefore, it is completely false and misleading to state that Warren supports “exceptions.”

The Campaign hopes you have been provided sufficient information to conclude this Advertisement is false and misleading, with no purpose other than to deceive the electorate. Therefore, your station should reject enabling this political activity by continue to allow this Advertisement air time. At a minimum, your station should demand the American Future Fund provide evidence to substantiate these false and misleading claims, which the Campaign believes it will not be able to do.

² While the contentions in the Templeton ad are equally as false and deceptive as the ones in the American Future Fund Advertisement, the campaign acknowledges that the station is likely obligated to air it as a candidate “use.”

³ <https://www.opensecrets.org/pacs/pacgot.php?cmte=C00632752&cycle=2018>

Cease and Desist

June 6, 2018

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Please contact me immediately upon making a decision on whether to air this Advertisement to advise me of your intentions.

Sincerely,

/s/

Michael R. Burchstead

MRB/kyn

"Not Conservative"

There's not a lot we know about John Warren.

But what we do know is not conservative.

He took money from a liberal super boss.

Frank Schuler donated \$3,500 to Warren.

Schuler is the President of the Partnership for Conservation (P4C) and The Ornstein-Schuler Companies and Treasurer of the PARTNERSHIP FOR CONSERVATION PAC P4C PAC.

Schuler donated \$10,000 to the PARTNERSHIP FOR CONSERVATION PAC P4C PAC.

PARTNERSHIP FOR CONSERVATION PAC P4C PAC gave:

\$1,000 to FEINSTEIN FOR SENATE 2018
\$2,000 to KLOBUCHAR FOR MINNESOTA
\$2,000 to TAMMY BALDWIN FOR SENATE
\$2,000 to Debbie Stabenow
\$5,000 to the Democratic Senatorial Committee

Source: Federal Election Commission Records – pulled 5/30/18

Warren says he is 100 percent pro-life but he supports exceptions.

March 10, 2018

"On abortion, Warren said he is "100 percent pro-life" but supports exceptions for when the mother's life is in danger. Without naming names, Warren chided other candidates for "flip-flopping" on the issue. If some conservative voters don't approve of Warren's more nuanced approach, he said that won't affect his campaign. "I don't do any pandering," Warren said. "I don't change who I am as a person. My message is the same message in every place that I go because that's who I am and I think that's what the voters want."

https://www.postandcourier.com/politics/battle-brewing-to-become-south-carolina-gov-henry-mcmaster-s/article_177ac1fa-223c-11e8-b440-4fc0479f06ae.html

Warren initially refused to support open carry and suppressors

April 4 – WYFF Interview

Are you for open carry? - "I think i'll have to take that into consideration. I think right now people have the rights to carry the weapons if they have a concealed weapons permit. I will definitely honor that. With the open carry, I'd have to give that some thought."

Commented [MB1]: Has he said anything since April 4 to clarify his position?

March 21- Newberry Observer

"Regarding gun rights, Warren said he was a staunch supporter of the Second Amendment, saying, "I tend to think that liberals are never going to be happy, and they believe in incremental change as well. So as soon as they dig in and say, 'let's ban this,' that's just a step towards banning everything." When asked about suppressors, he replied, "I'm not sure anyone right now needs a suppressor. You know, in the military, in the Marine infantry unit, we didn't use them. I don't know what the laws are on suppressors, so I'd have to look at that, but I will fight vehemently for our Second Amendment rights."

<https://www.newberryobserver.com/news/22483/gubernatorial-hopeful-john-warren-addresses-newberry-gop>

That's not protecting the second amendment.

And it's not conservative.

What else are we going to learn about John Warren before it's too late?

We just can't trust him.

Mary Margaret Nelms

From: Barry Faber
Sent: Wednesday, June 6, 2018 2:48 PM
To: Leigh Vaters
Cc: Doris Navarro; Mary Margaret Nelms; Bill Ballard; Paul Smedley; John Farmer
Subject: RE: Warren vs. American Future Fund Cease and Desist

Station may continue to run the ad. Let both parties know and place all materials, including a notation of this decision, in public file. Thanks.

From: Leigh Vaters
Sent: Wednesday, June 06, 2018 2:12 PM
To: Barry Faber <BFaber@sbgtv.com>
Cc: Doris Navarro <danavarro@sbgtv.com>; Mary Margaret Nelms <mmnelms@sbgtv.com>; Bill Ballard <wrballard@sbgtv.com>; Paul Smedley <pcsmmedley@sbgtv.com>; John Farmer <jfarmer@wach.com>; Leigh Vaters <lmv@wpde.com>
Subject: SC: Warren vs. American Future Fund Cease and Desist

SC Gubinatorial race:

We received a Cease and Desist from the Warren Campaign against an ad the American Future Fund is running.

Both the Complaint and Response (with Script) are attached.

This would apply for WACH-Columbia, WPDE-Myrtle Beach and ECIV-Charleston

Leigh M. Vaters
Director of Business Development
Sinclair Broadcasting Group
(W) 843-234-9733 x2270
(C) 843-742-9834
(E) lmvaters@sbgtv.com

From: Nesci, Mick (CMG-REP) [mailto:MNesci@coxreps.com]
Sent: Wednesday, June 06, 2018 1:30 PM
To: Leigh Vaters <lmv@wpde.com>
Cc: Mary Margaret Nelms <mmnelms@sbgtv.com>
Subject: RE: Warren Cease and Desist

Good afternoon,

I just got the cease and desist emailed to me, which isn't really the protocol, but either way, it's attached first. The American Future Fund substantiation just came in as well assuming that more stations would receive the letter and it is attached second.

Let me know if you have any questions at all on this one or if you need further documentation.

Thanks for your help and have a great day,
Mick

HOLTZMANVOGELJOSEFIAKTORCHINSKY PLLC
Attorneys at Law

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

June 7, 2018

We are in receipt of your letter of today's date regarding the objection letter submitted by counsel for John Warren. Thank you for the opportunity to respond.

The American Future Fund advertisement at issue is accurate, substantiated, and there is no reason for your station to remove it from the air.

1. The advertisement's statement that John Warren “flip-flopped on supporting open carry” is accurate. On April 4, 2018, Mr. Warren was asked by WYFF, “Are you for open carry?” John Warren responded: “I think I’ll have to take that into consideration. I think right now people have the rights to carry the weapons if they have a concealed weapons permit. I will definitely honor that. With the open carry, I’d have to give that some thought.”

Counsel for Mr. Warren claims that WYFF conducted a “Truth Check” on a *different* advertisement and found a claim made in that *different* advertisement to be “false.” What WYFF found to be “false” was the *different* advertisement’s claim that Warren was “*open to stronger gun control laws*.” Mr. Warren’s counsel’s contention that the “Truth Check” considered a “substantially similar gun control claim” run by another sponsor is simply not true. The “Truth Check” segment may be viewed at <https://www.youtube.com/watch?reload=9&v=0pCCujaspZo>.

The American Future Fund advertisement does *not* claim that Warren is “open to stronger gun control laws,” or any such “substantially similar” claim. Rather, the American Future Fund advertisement accurately states that Warren “flip-flopped on supporting open carry.” “Flip-flopped,” of course, means the candidate took one position on an issue and later took another position. On April 4, John Warren said he needed to give the issue of open carry “some thought.” Later, he said he supported it. “Flip-flopped” is an accurate characterization of John Warren’s two positions, and that language was chosen specifically to acknowledge that Mr. Warren had changed his position and expressed his support for open carry. American Future Fund does not assert that Mr. Warren is opposed to open carry laws.

2. The advertisement's statement that John Warren received contributions from a “liberal PAC boss” is accurate. Counsel for Mr. Warren claims that it is “inaccurate, deceptive, and misleading on its face” to claim that “Warren took money from a liberal PAC boss.” At the time, counsel acknowledges that he is unfamiliar with the details of the claim. The “liberal PAC boss” in question is Frank Shuler. Mr. Shuler contributed to John Warren’s campaign. Mr. Shuler is also the Treasurer of the Partnership for Conservation PAC P4C PAC. This PAC has contributed to funds to Senator Feinstein, Senator Klobuchar, Senator Baldwin,

Senator Stabenow, and the Democratic Senatorial Campaign Committee. Mr. Shuler is an officer of a PAC that has contributed funds to liberal Senators and the Democratic Party's Senate campaign arm. "Liberal PAC boss" is an accurate assessment, regardless of whether Mr. Warren's campaign would characterize Mr. Shuler differently.

3. The advertisement's statement that John Warren supports abortion exceptions is accurate. Mr. Warren's counsel claims that it is "completely false and misleading to state that Warren supports 'exceptions'" when he only supports one "exception." Counsel refers to a *Post & Courier* article that he says "accurately reflected" Mr. Warren's position. According this *Post & Courier* article, which Mr. Warren's counsel says is accurate, Mr. Warren "supports exceptions for when the mother's life is in danger." The *Post & Courier* used the plural "exceptions." The American Future Fund relied on the *Post & Courier* article for its advertisement and used the same word, "exceptions."

The American Future Fund advertisement is accurate and fully substantiated, and Mr. Warren's counsel does not demonstrate otherwise. If Mr. Warren prefers to characterize his record differently, he is free to buy air time on your station to do so. Your station should not play the role of censor on Mr. Warren's behalf. Notwithstanding Mr. Burchstead's references to decades-old court decisions, your station will face no sanctions of any kind for continuing to air an advertisement that is fully accurate and substantiated. Accordingly, we trust that our client's advertisement will remain on the air, without interruption, through its scheduled run.

Sincerely,



Michael Bayes
Counsel to American Future Fund